



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FIFTH SECTION

CASE OF SHAGIN v. UKRAINE

(Application no. 20437/05)

JUDGMENT

STRASBOURG

10 December 2009

FINAL

10/03/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Shagin v. Ukraine,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Peer Lorenzen, *President*,

Renate Jaeger,

Karel Jungwiert,

Rait Maruste,

Mark Villiger,

Mirjana Lazarova Trajkovska, *judges*,

Mykhaylo Buromenskiy, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 17 November 2009,

Delivers the following judgment:

PROCEDURE

1. The case originated in an application (no. 20437/05) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Igor Igorevich Shagin (“the applicant”), on 1 June 2005.

2. The applicant was represented by Ms Y. Lysak, a lawyer practising in Kyiv. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Yuriy Zaytsev..

3. The applicant alleged, in particular, that his trial had not been public and that certain statements by high-ranking public officials published in the media concerning his case had been incompatible with the principle of the presumption of innocence.

4. On 27 March 2007 the Court decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3). The Russian Government did not wish to exercise their right to intervene under Article 36 § 1 of the Convention

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, Mr Igor Igorevich Shagin, is a Russian national who was born in 1970 and lives in Kyiv.

A. The pre-trial investigations

6. On an unspecified date criminal proceedings were initiated on the suspicion that a network of private commercial enterprises, “Top-Service”, directed by the applicant, organized an armed group with conspiracy to kill State officials and businessmen who were allegedly obstructing its business.

7. On 28 April 2000 the Podilsky District Court of Kyiv sanctioned the applicant for forcefully resisting police and placed him under twelve days' administrative arrest.

8. During the period of 28 April to 10 May 2000 the applicant was questioned and participated in a number of investigative activities as a witness in the criminal proceedings (see paragraph 6 above).

9. On 10 May 2000 the applicant was arrested as a suspect and on the following day he had his first meeting with lawyers.

10. On 19 May 2000 the Kyiv Prosecutor's Office charged the applicant with banditism. Namely, he was charged with having created a gangster group suspected of having committed eight counts of murder, attempted murder and infliction of serious bodily injuries.

11. On 18 April 2001 the pre-trial investigation was declared completed and the applicant was given access to the case file.

12. On 26 June 2001 the investigation was resumed and new charges were brought against the applicant: in addition to banditism, they included infringement on the life of a law-enforcement official and incitement to murder for profit, related to the victims' official duties and committed repeatedly by an organised group following orders.

13. On the same day the applicant's lawyer complained to the Kyiv Prosecutor's Office (“the Kyiv prosecutor”) that by reopening the investigation the investigator had in fact unlawfully prolonged the term of the applicant's detention and had violated his right to defence.

14. On 27 June 2001 the Kyiv prosecutor rejected the above complaints, having noted, in particular, that the reopening of the investigation had been necessitated by the need for additional investigative activities and that the applicant would be given the opportunity to study the case file again after the completion of the investigation.

15. On 29 January 2002 the Kyiv prosecutor found unsubstantiated the applicant's complaints that, *inter alia*, he had not had access to the schedule for studying the case-file and to certain documents, as he had signed a statement to the contrary.

16. On 13 February 2002 a new indictment was brought against the applicant. He was charged with additional counts of incitement to murder.

17. From 13 to 15 February 2002 the applicant, at his own request, submitted in writing his statements in respect of the new charges, in which he alleged that he himself had been a victim of banditism. However, on 15 February 2002 the investigator proposed that he answer his questions instead, as he claimed that the applicant's statements did not relate to the essence of the charges against him. The applicant explained that he would

answer the questions as soon as he had finished writing his statements and asked not to be prevented from using that possibility fully. On the same day the investigator declared the investigation completed, having found the applicant's statements to be of no relevance for the investigation at issue. The applicant's lawyer complained about that to the Kyiv prosecutor, who upheld the investigator's actions.

18. On 30 September 2002 the case was referred to the Kyiv City Court of Appeal (“the Kyiv Court of Appeal”) for trial. The applicant continued to be represented by at least two professional lawyers.

B. The trial

19. The proceedings in the Kyiv Court of Appeal, which acted as a first-instance court, lasted from 4 November 2002 until 16 March 2004. As the case had attracted public attention and no court room was big enough for all those wishing to attend, a cinema hall was rented by the court for this purpose.

20. However, on 23 May 2003 the court decided to hold hearings *in camera*, stating as follows:

“... The hearing is constantly attended by a person, who, according to him, on the orders of Mr Shagin, audiotapes [the proceedings]. This person does not react to the repeated remarks of the Presiding Judge in this respect. Furthermore, this person has a pistol on him.

The Court, bearing in mind the number of charges, with a view to avoiding disclosure of the statements of witnesses and victims, and in order to safeguard the security of the trial participants, according to the recommendations of Section 6 of Resolution No. 10 of the Plenary of the Supreme Court of Ukraine of 18 June 1999 “On Application of the Law ‘On the State Protection of Judges, Employees of Courts and Law Enforcement Bodies and Trial Participants’, Articles 7 and 16 of the Law ‘On the Protection of the Security of Persons Participating in Criminal Trials’”,

RULED:

to hold further hearings of the criminal case against Shagin Igor Igorevich and others *in camera*.”

21. In accordance with the procedural legislation this ruling was not subject to appeal. The applicant, who denied having instructed anyone to audiotape the hearings, unsuccessfully called for an investigation into the incident and requested the bench to reconsider its decision.

22. The hearings continued *in camera* in the cinema.

23. As it follows from a letter of the Kyiv Court of Appeal to the local bar commission of 20 November 2003 on an unrelated issue, the security measures for the trial included the presence of at least seventy guards.

24. In the course of the trial some fifty-five witnesses and fifteen co-defendants gave evidence. The court examined the written statements of about one hundred witnesses who had been questioned during the pre-trial investigation but failed to attend the trial, as well as self-incriminating statements by the co-defendants obtained during the pre-trial investigation.

The court further reviewed videotapes of several reconstitutions of events. It also examined a large quantity of written evidence and experts' opinions, which included: the registration and statutory documents of all the companies within the network; their contracts with other enterprises throughout the business chain; findings of the related investigation undertaken in Russia, Belarus, Latvia and Estonia under the inter-State legal aid scheme; findings of the investigation by Interpol; and numerous other documents.

25. During the trial the co-defendants withdrew their self-incriminating statements and pleaded innocent. They alleged that they had been forced to incriminate themselves and the applicant. The court examined their allegations of ill-treatment in police custody (of which the applicant did not complain) and found them unsubstantiated, having referred, *inter alia*, to the results of medical examinations they had undergone and the lack of any complaints on their part during the investigation.

26. In the course of the trial the applicant requested the court to summon certain witnesses: namely, one of the cofounders of the companies led by the applicant, Mr F., who had allegedly possessed more information than he had disclosed during the pre-trial investigation; certain customs officials; and the manager of one of the Russian companies, who could allegedly confirm his business relationship with the applicant. The court allowed his request concerning Mr F. and rejected the others. Mr F. was summoned by the court several times, but failed to appear.

27. The trial court established that the applicant had managed a network of companies involved in fraudulent financial activities and that he had created a gangster group for the protection of its business interests.

28. On 15 March 2004 it found the applicant guilty of having formed a criminal organisation, three counts of incitement to murder, as well as incitement to inflict serious bodily injuries on a law-enforcement official and infringement on the life of a law-enforcement official, and sentenced him to life imprisonment.

29. The applicant's subsequent appeal in cassation challenged the above judgment on a number of points: the admissibility of the evidence admitted by the court, a lack of conclusive evidence for each count, the refusal of the investigator to continue questioning the applicant, and the court's failure to summon or to ensure attendance of certain witnesses. The applicant also complained that the high-ranking prosecution officials had publicly declared him guilty even before his first questioning as a suspect and that the court had also presumed him guilty from the outset.

30. On 14 December 2004 the Supreme Court of Ukraine, following a public hearing, upheld the applicant's conviction, having heard the arguments of the prosecution and the defence and having assessed the case file materials. Its ruling did not address any of the specific issues raised by the applicant in his cassation appeal. According to the applicant, the Supreme Court held only one hearing, which lasted for about four hours.

C. The press conference of 10 May 2000 and its media coverage

31. On 10 May 2000, immediately following the applicant's arrest as a suspect in the criminal investigation, the Kyiv Prosecutor's Office organised a press conference, which received broad coverage in the media.

32. On 12 May 2000 the *Segodnia* daily newspaper published an article entitled "A gang of killers has been arrested in the capital (sensation)", which contained the following statements:

"The Kyiv Prosecutor Y. G., his first deputy V. S. and Deputy Head of the Kyiv Department of the Ministry of the Interior told journalists about the arrest of fourteen members of a gang which has been engaged in criminal activities in the city since 1997. ... According to the law-enforcement authorities, the director of one of the "Top-Service" structures, Igor Shagin, is suspected of being a principal inciter. He is charged with eight incitements, including incitement to murder ... Shagin paid about 100,000 US dollars in cash to his accomplices to carry out the crimes. ... The Kyiv Prosecutor stressed that "the officials were persecuted by the gangsters exclusively on account of the scrupulous performance of their duties, which had interfered with the plans of the structure headed by Shagin ..."

33. On the same day the *Fakty I Kommentarii* daily newspaper published an article entitled "For the first time an organized group of killers, which executed murders of state officials, was arrested in Kyiv". The article contained the following statements:

"During yesterday's briefing, the Kyiv Prosecutor Y. G. told journalists that a series of ordered murders and attempted murders had been uncovered ... Fourteen members of the gang involved in the commission of those crimes have been arrested: six killers, three intermediaries, four inciters and one arms supplier. The head of the gang is also among the arrestees – it's Igor Shagin, one of the directors of a well-known trading company, "Top-Service". The killers confessed that it was he who had incited the murders ..."

34. The article also quoted the First Deputy of the Kyiv Prosecutor V. S. as follows:

"30 year old Igor Shagin ... was the inciter of eight out of twelve episodes established by us. ... Shagin paid the killers a total of about 100,000 US dollars to carry out his orders ..."

35. On the same day the *Den* daily newspaper published an article under the headline "The criminal leader has been identified (eight crimes against Kyiv public officials are attributed to him)", which contained the following:

"Kyiv Prosecutor Y.G. reported yesterday at the press-conference that the director of "Top-Service", the Russian national Igor Shagin, had incited eight crimes against State officials between 1997 and 2000..."

36. On the same day the *Kievskie Vedomosti* daily newspaper published an article entitled "Murderous Top-Service", in which it quoted the First Deputy of the Kyiv Prosecutor, V. S., as follows:

"According to our calculations, Shagin paid the killers a total of about 100,000 US dollars in cash to carry out his orders. ... In fact, Shagin was the leader of that group. His orders [to murder] were of a systematic nature."

37. The aforementioned quotations of the First Deputy of the Kyiv Prosecutor V. S. also appeared on 16 May 2000 in the *Vecherniye Vesti* newspaper's article "Who is behind the killers".

38. On 15 May 2000 the *Svoboda* ("Freedom") newspaper published an article entitled "Bloody business", where it announced that:

"Sensational reports on the arrest of a large gangster group were disclosed yesterday by the Head of the State Tax Administration of Ukraine M. A. and Kyiv Prosecutor Y. G. According to the Deputy Minister of the Interior V. M., the twelve arrestees, including six professional killers, have a long record of notorious crimes ... Heads of the law-enforcement bodies assured that the ... governmental employees ... had become victims of the business appetites of Igor Shagin, who was the head of Kyiv "Top-Service" Ltd. Do you remember a nice commercial on TV "Oh, 'Top-Service', oh 'Top Service', people are nice here ..."? That nice man Shagin incited others to kill those who prevented him from implementing his plans."

39. On 18 May 2000 the *Yuridicheskaya Praktika* ("Legal Practice") weekly newspaper published an article under the headline "Ukrainian-style presumption of innocence", in which it expressed a view that the statements made by the public officials concerning the applicant's case were incompatible with the principle of the presumption of innocence. The article contained the following quotations of the Kyiv Prosecutor Y. G.:

"The killers are testifying that Shagin ordered several attempted murders"; "These crimes can be considered resolved even though the investigation is still going on".

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Public nature of the trial

40. Article 129 of the Constitution of Ukraine guarantees the public nature of a trial as one of the fundamental principles of the administration of justice.

41. Article 9 of the Law "On the Judiciary", in so far as relevant, reads as follows:

"The courts shall examine cases publicly, with the exceptions envisaged by the procedural legislation. (...) *In camera* hearings are possible upon a court's ruling in the cases envisaged by the procedural legislation."

42. The Code of Criminal Procedure, in its relevant part, provides as follows:

"Article 20. Public nature of court proceedings

Judicial examination in all courts shall be public, unless the interests of security of the state or other secrets protected by law require otherwise.

Hearing *in camera* can also be allowed by a reasoned court ruling in cases of crimes by minors, in cases of sexual crimes, and in other cases with a view to avoiding disclosure of the private information of the trial participants, or in cases when it is necessary for the security of persons under protection. ..."

43. The Law “On Protection of the Security of Persons Participating in Criminal Trials” provides for hearings *in camera* as a security measure (Article 7). Pursuant to its Article 16, hearings *in camera* may take place if ordered by a reasoned court ruling in cases where it is necessary for the security of persons under protection.

44. Section 6 of Resolution No. 10 of 18 June 1999 of the Plenary of the Supreme Court of Ukraine “On Application of the Law ‘On the State Protection of Judges, Employees of Courts and Law Enforcement Bodies and Trial Participants’” reads as follows:

“In order to avoid disclosure of incriminating statements of victims and witnesses, where there is a real danger of infringement on their life, home or property, courts may hold hearings in criminal cases (especially in cases of organized crime) *in camera*.”

B. Presumption of innocence

45. The principle of the presumption of innocence is enshrined in Article 62 of the Constitution of Ukraine, which can be found in the judgment of *Grabchuk v. Ukraine*, no. 8599/02, § 26, 21 September 2006.

Article 2 of the Criminal Code, in so far as relevant, reads as follows:

“A person shall be presumed innocent of committing a crime and shall not be subjected to criminal punishment until his or her guilt is proved in compliance with the legally established procedure and established by a court's verdict of guilty”.

46. Resolution No. 5 of the Presidium of the Supreme Court of Ukraine of 20 February 2004 “On the situation with the administration of justice in 2003 and 2004” contained the following paragraph:

“There have been numerous publications in the media in breach of Article 62 of the Constitution concerning persons not yet found guilty of having committed crimes by a court's verdict. Those included the publication of statements aimed at prejudging cases in favour of certain persons.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE TRIAL *IN CAMERA*

47. The applicant complained that his right to a public hearing had been violated as a result of the allegedly unjustified exclusion of the public from the proceedings by the Kyiv Court of Appeal from 23 May 2003 onwards. He relied on Article 6 § 1 of the Convention, which reads, in so far as relevant, as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... public hearing ...”

A. Admissibility

48. The Government contended that this part of the application was inadmissible as being submitted outside the six-month time-limit, which, according to them, had started running on 23 May 2003, when the trial court had ruled to hold further hearings *in camera*.

49. The applicant disagreed.

50. The Court underlines that, in accordance with Article 35 § 1 of the Convention, it may only examine complaints which have been submitted within six months from the date of the “final” domestic decision.

51. It notes that the present complaint concerns an alleged violation of one of the elements of the right to a fair trial, in a trial which was completed by the final ruling of the Supreme Court on 14 December 2004.

52. Accordingly, the Court considers that the applicant complied with the six-month time-limit and dismisses the Government's objection.

53. The Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

54. The Government did not make any submissions on the merits of the case.

55. The applicant maintained his complaint.

56. The Court reiterates that the holding of court hearings in public constitutes a fundamental principle enshrined in Article 6 § 1. This public character of proceedings protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the courts can be maintained. Administration of justice, including trials, derives legitimacy from being conducted in public. By rendering the administration of justice transparent, publicity contributes to fulfilling the aim of Article 6 § 1, namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society, within the meaning of the Convention (see *Belashev v. Russia*, no. 28617/03, § 79, 4 December 2008, with further references).

57. The Court notes, however, that the requirement to hold a public hearing is subject to exceptions. This is apparent from the text of Article 6 § 1 itself, which contains the provision that “the press and public may be excluded from all or part of the trial in the interests of ... national security in a democratic society, ... or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice”. Thus, it may on occasion be necessary under Article 6 to limit the open and public nature of proceedings in order, for example, to protect the safety or privacy of witnesses, or to promote the free exchange of information and opinion in the pursuit of justice (see *B. and P. v. the United Kingdom*, nos. 36337/97 and 35974/97, § 37, ECHR 2001-III, with further references).

58. The Court also observes that there is a high expectation of publicity in ordinary criminal proceedings, which may well concern dangerous individuals, notwithstanding the attendant security problems (see *Campbell and Fell v. the United Kingdom*, 28 June 1984, § 87, Series A no. 80). Moreover, security problems, although being a common feature of many criminal proceedings, rarely justify excluding the public from a trial (see *Riepan v. Austria*, no. 35115/97, § 34, ECHR 2000-XII).

59. Furthermore, the Court underlines the importance of a public hearing before the first-instance court in criminal proceedings where the scope of any subsequent review by the appellate court is limited; and thus even if the examination of the case on appeal is public, this will not necessarily remedy the lack of publicity during the trial (see, *mutatis mutandis*, *Riepan*, cited above, § 37).

60. Turning to the facts of the present case, the Court notes that initially the Kyiv Court of Appeal implemented unusual measures in order to ensure the attendance of the press and public – it rented a big hall where open hearings took place for the first six months, until it was decided on 23 May 2003 to exclude the public. The trial continued *in camera* for almost ten months.

61. The Court's task in the present case is to establish, first of all, whether the exclusion of the public from the hearings before the Kyiv Court of Appeal, acting as a trial court, was justified for the purposes of any of the exceptions to the rule of the public hearing under Article 6 § 1 of the Convention. If no such justification is found, it will remain to be seen whether the lack of a public hearing before the trial court could have been remedied by its public examination by the Supreme Court.

62. The Court observes that the Kyiv Court of Appeal advanced the following two reasons for the exclusion of the public from the hearings in its ruling of 23 May 2003: the privacy of the witnesses and victims and the security of the trial participants. The only explanation given as to what had caused those concerns was a reference to the presence of an unidentified individual in the audience, who was allegedly armed and who had allegedly been audio-recording the hearings on the applicant's instruction and in disregard of the judges' remarks.

63. Given the nature and scope of the charges against the applicant and other co-defendants, as well as the broad media coverage of the criminal proceedings at issue, the Court is satisfied that this case was a matter of substantial interest to the public.

64. The Court further observes that the venue for the trial was well-suited to accommodate a large audience (see paragraph 19 above) and that adequate security measures seem to have been taken for ensuring order in the court room (see paragraph 23 above).

65. The Court reiterates that security concerns may, if only rarely, justify excluding the public from a trial (see paragraph 58 above). However, any such security matters would have to be of substantial weight and fully explained. The only specific justification given by the trial court in the present case for excluding the public was the presence of a particular individual who was taping the proceedings and who was armed. However, it

is not apparent why the presence of one individual called for exclusion of the public: any security issues raised by the individual could have been less far-reaching measures, such as removing him from the court-room. The trial court's other comments, a reference to the need to avoid disclosure of the statements of witness and victims and a general reference to the security of participants, were not put in context or otherwise explained either by the domestic courts or by the Government in the proceedings before the Court. The Court finds that no reasons have been given which could justify the exclusion of the public from the entirety of the first-instance proceedings.

66. The Court does not consider that the public examination of the case by the Supreme Court remedied its lack before the trial court. Thus, in practice its review was incomparably more limited than that of the first-instance trial, as there was no rehearing or examination of witnesses and only one hearing was held at that stage of the proceedings (see paragraphs 19, 24 and 30 above).

67. Having regard to these considerations, the Court concludes that there has been a violation of Article 6 § 1 of the Convention owing to the lack of a public hearing in the applicant's case.

II. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

68. The applicant complained that public officials had made statements to the mass media asserting his guilt prior to his conviction by a court, thus influencing public opinion and prejudging the case against him. He relied on Article 6 § 2 of the Convention, which provides as follows:

“Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.”

A. Admissibility

1. *Exhaustion of domestic remedies*

69. The Government submitted that the applicant should have brought a civil action against the public officials involved seeking damages for his alleged defamation, which was in their opinion an effective remedy to pursue in the circumstances.

70. The applicant contested that view.

71. The Court reiterates that the presumption of innocence, like the safeguards provided by Article 6 § 3, is viewed as a specific guarantee of a fair trial in the determination of a criminal charge against an individual (see paragraph 81 below). The Court observes that in the present case the applicant could and did raise this complaint before the courts dealing with his criminal case (for the facts, see paragraph 29 above; and for the case-law, see, *a contrario*, *Ksenzov v. Russia* (dec.), no. 75386/01, 27 January 2005, and *Koval v. Ukraine* (dec.), no. 65550/01, 10 December 2002).

72. The Court does not exclude that the avenue advanced by the Government could have been an effective domestic remedy. However, where several remedies are available, the applicant is not required to pursue more than one (see *Karakó v. Hungary*, no. 39311/05, § 14, 28 April 2009, with further references).

73. It follows that the complaint cannot be declared inadmissible for non-exhaustion of domestic remedies.

2. Compliance with the six-month time-limit

74. The Government asserted, alternatively to their non-exhaustion objection, that the applicant had introduced this complaint out of the six-month time-limit. The latter disagreed.

75. Having regard to its findings in paragraphs 71 and 73 above, the Court considers that the six-month time-limit, for the purposes of Article 35 § 1 of the Convention, started running for the applicant with the final determination of the criminal charge against him by the Supreme Court on 14 December 2004.

76. The Court observes that the applicant introduced his application with the Court on 1 June 2005, which was within the time-limit.

77. Accordingly, the Court dismisses this objection by the Government as well.

78. The Court further notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

79. Having raised the aforementioned objections as to the admissibility of this complaint, the Government did not make any submissions on its merits.

80. The applicant maintained his complaint.

81. The Court reiterates that the presumption of innocence enshrined in Article 6 § 2 of the Convention is one of the elements of a fair criminal trial guaranteed by Article 6 § 1 (see *Alenet de Ribemont v. France*, 10 February 1995, § 35, Series A no. 308). It does not only prohibit the premature expression by the tribunal itself of the opinion that the person “charged with a criminal offence” is guilty before he has been so proved according to law, but also covers statements made by other public officials about pending criminal investigations which encourage the public to believe that the suspect is guilty and prejudice the assessment of the facts by the competent judicial authority (for a recapitulation of the relevant case-law, see, for example, *Khuzhin and Others v. Russia*, no. 13470/02, § 93, 23 October 2008). It suffices, even in the absence of any formal finding, that there is some reasoning to suggest that the official regards the accused as guilty (see *Böhmer v. Germany*, no. 37568/97, § 54, 3 October 2002). In this regard the Court has emphasised the importance of the choice of words by

public officials in their statements before a person has been tried and found guilty of a particular criminal offence (see *Daktaras v. Lithuania*, no. 42095/98, § 41, ECHR 2000-X). Thus, a fundamental distinction must be made between a statement that someone is merely suspected of having committed a crime and a clear declaration, in the absence of a final conviction, that an individual has committed the crime in question (see *Ismoilov and Others v. Russia*, no. 2947/06, § 166, 24 April 2008). Whether a statement by a public official is in breach of the principle of the presumption of innocence must be determined in the context of the particular circumstances in which the impugned statement was made (see *Daktaras*, cited above, § 43).

82. Moreover, in determining whether an impugned statement by a public official amounts to a violation of Article 6 § 2, the Court does not attach crucial importance to the nature or outcome of any subsequent judicial proceedings. Thus, the Court held that there had been a violation of Article 6 § 2 of the Convention even in cases where the national courts had discontinued the criminal proceedings as time-barred, where the applicant had been acquitted, and where the domestic courts had not had to determine the question of guilt at all (see *Allenet de Ribemont*, cited above, § 35).

83. The Court underlines that Article 6 § 2 of the Convention cannot prevent the authorities from informing the public about criminal investigations in progress, which would run counter to the principles of the freedom of expression enshrined in Article 10 of the Convention. However, it requires that they do so with all the discretion and circumspection necessary if the presumption of innocence is to be respected (see *Allenet de Ribemont*, cited above, § 38). At the same time, the investigation and police authorities cannot be held responsible for the actions of the media (see *Y.B. and Others v. Turkey*, nos. 48173/99 and 48319/99, § 48, 28 October 2004).

84. Turning to the facts of the present case, the Court observes that some high-ranking prosecution, police and tax administration officials made statements concerning the criminal proceedings against the applicant at the very initial stage of those proceedings and in a context independent of them, namely at a press-conference organised by the Kyiv Prosecutor's Office.

85. As to the content of the impugned statements, and in the absence of any explanations from the Government, the Court can only base its judgment on a number of publications in the press, having in its possession neither the transcript of the aforementioned press conference nor any press releases which could have been issued by its organisers. In order to avoid mistaking the journalists' interpretations for the authentic statements of the public officials concerned, the Court will limit its assessment to the statement of the First Deputy of the Kyiv Prosecutor V. S., which was consistently quoted in three different newspapers (see paragraphs 34, 36 and 37 above). It was as follows: “According to our calculations, Shagin paid the killers a total of about 100 thousand US dollars in cash to carry out his orders. ... In fact, Shagin was the leader of that group. His orders [to murder] were of a systematic nature”.

86. In the Court's view, the wording chosen indicates that the speaker considered it to be an established fact that the applicant had been ordering

and paying for murders, while the only issue about which he was less confident was the exact amount paid for the killings. Accordingly, this statement, which had been made long before the applicant's indictment, amounted to a declaration of his guilt, which, first, encouraged the public to believe him to be guilty and, secondly, prejudged the assessment of the facts by the competent judicial authority.

87. There has therefore been a breach of Article 6 § 2 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

A. Other alleged violations of Article 6 of the Convention

88. The applicant also complained under Article 6 § 1 of the Convention that his trial had not been truly adversarial and that his conviction had been largely based on evidence not examined during the hearings. He also complained, relying on Article 6 § 3 (a), (b), (c) and (d) of the Convention, that he had not been promptly informed about the charges against him, that he had not had access to a lawyer at the initial stages of the investigation, that he had been restricted in presenting his arguments to the investigator and in his study of the case file, and that he had not been able to examine some witnesses in court.

89. However, in the light of all the material before it, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the provisions the applicant relied on.

90. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Alleged violations of other provisions of the Convention

91. The applicant complained under Article 3 of the Convention that he had been ill-treated in police custody following his arrest on 28 April 2000.

92. The Court notes that this complaint was never raised before the domestic authorities in compliance with the procedural legislation and it therefore rejects it for non-exhaustion of domestic remedies pursuant to Article 35 § 1 of the Convention.

93. The applicant next complained under the same provision about the conditions of his detention between 28 April and 7 May 2000.

94. Even assuming, to the applicant's benefit, that he had had no effective remedies to pursue in regard of this complaint, the Court notes that the application was introduced about five years after the situation complained of had ceased to exist. It therefore rejects this complaint under Article 35 §§ 1 and 4 of the Convention as being out of the six-month time-limit.

95. Lastly, the applicant complained under Article 5 §§ 1 (c) and 4 of the Convention about the alleged unlawfulness and lack of judicial review of his detention during the period of 28 April to 10 May 2000.

96. The Court notes that the applicant was convicted by the first-instance court on 15 March 2004. Thereafter for the purposes of the Convention he was a person convicted by a competent court, pursuant to Article 5 § 1 (a) of the Convention and, consequently, ceased to be detained pending investigation and trial under Article 5 § 1 (c) (see *Ivakhnenko v. Russia* (dec.), no. 12622/04, 21 October 2008, with further references). The application was lodged with the Court on 1 June 2005, that is, more than six months after the applicant's detention pending trial, including that during the aforementioned period, had ended.

97. It follows that this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

98. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

99. The applicant claimed EUR 200,000 in respect of non-pecuniary damage.

100. The Government contested that claim.

101. The Court considers that the applicant must have suffered non-pecuniary damage, in particular for the violation of the presumption of innocence, which cannot be sufficiently compensated by the finding of a violation alone. Ruling on an equitable basis, it awards him EUR 2,000 under that head.

B. Costs and expenses

102. The applicant made no claim for costs and expenses. Accordingly, the Court makes no award.

C. Default interest

103. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the applicant's trial *in camera* and the alleged breach of his right to the presumption of innocence admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the lack of a public hearing;
3. *Holds* that there has been a violation of Article 6 § 2 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousands euros) in respect of non-pecuniary damage plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President